DRN-3378397

The complaint

Mr M, through a representative, says Everyday Lending Limited (ELL) trading as Everyday Loans lent to him irresponsibly.

What happened

Mr M took out a 24-month instalment loan for £1,500 from ELL on 6 June 2018. The monthly repayments were £130.38 and the total repayable was £3,129.12.

Mr M says he wasn't given enough information about the loan so couldn't make an informed decision. He didn't have to provide bank statements, he had other debts at the time of this loan and his personal circumstances were not properly considered. His mental health has deteriorated as a result of this borrowing.

Our adjudicator said Mr M's complaint should be upheld. She found the lender's checks were proportionate but that it did not make a fair lending decision based on the information it gathered.

ELL did not respond to the adjudicator's assessment. As an agreement wasn't reached the complaint was passed to me, an ombudsman, to make a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The rules and regulations when ELL lent to Mr M required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So ELL had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mr M. In other words, it wasn't enough for ELL to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr M.

Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of credit they have applied for.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the lower a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the longer the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether ELL did what it needed to before agreeing to lend to Mr M. So to reach my conclusion I have considered the following questions:

- did ELL complete reasonable and proportionate checks when assessing Mr M's loan application to satisfy itself that he would be able to repay the loan in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did ELL make a fair lending decision?
- did ELL act unfairly or unreasonably in some other way?

I can see ELL asked for some information from Mr M before it approved the loan. It asked for details of his income and checked this on a recent payslip and bank statements. It estimated his living costs using national statistics. It also checked Mr M's credit file to understand his credit history and existing monthly credit commitments. It added in the additional credit commitments it could see from the relevant transactions on Mr M's bank statements. And finally it asked about the purpose of the loan which was debt consolidation. From these checks combined ELL concluded Mr M would have monthly disposable income of around £390 after repaying his outstanding payday loans and making this loan repayment, and so he could afford to take on the loan.

I think these checks were proportionate, but I am not satisfied ELL responded appropriately to the information it gathered. I'll explain why.

As part of its assessment ELL completed a credit check that allowed it to understand how much Mr M needed to spend ongoing to meet his monthly credit commitments. It deducted the repayments of the payday loans Mr M planned to settle with this loan. This is reasonable. But ELL could see Mr M would still be spending £567.29 on two long-term hire purchase agreements each month. This was a significant percentage of his income and by giving this loan in addition ELL increased the amount Mr M needed to commit to repaying credit to around 45% of his monthly net income.

I think at this level the lender ought to have realised there was a risk Mr M would be unable to sustainably repay his loan over the term – so without borrowing to repay or suffering other adverse financial consequences. And ELL needed to consider this, not just the pounds and pence affordability, to meet its regulatory commitments.

It follows I think ELL was wrong to give the loan to Mr M.

Did ELL act unfairly or unreasonably in some other way?

I don't find that it did. Mr M says he wasn't given enough information about the loan. But the Fixed Sum Loan Agreement Mr M signed clearly set out the terms of the loan, including the costs. So I think it's most likely he would have known what he was agreeing to: it's reasonable to expect he would have read the agreement in full before signing. I'm sorry to hear Mr M's mental health deteriorated whilst he had this loan. I hope he will find some relief now that the investigation into his complaint is complete.

Putting things right

I think it's fair and reasonable for Mr M to repay the capital that he borrowed, because he had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been provided to him.

ELL should:

- Refund all the interest and charges Mr M paid, so add up the total amount repaid and deduct that sum from the capital amount borrowed.
- If this results in him having effectively made over payments then ELL should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement*.
- If there is any capital balance outstanding ELL must try to agree an affordable payment plan with Mr M.
- Remove any adverse information recorded on Mr M's credit file in relation to the loan.

*HM Revenue & Customs requires ELL to deduct tax from this interest. ELL should give Mr M a certificate showing how much tax it's deducted, if he asks for one.

My final decision

I am upholding Mr M's complaint. Everyday Lending Limited (ELL) trading as Everyday Loans must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 May 2022.

Rebecca Connelley
Ombudsman